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ALEXANDER L. STEVAS,
CLERK

No. 80-767

In the Supreme Court of the United States

OCTOBER TERM, 1980

UNITED STATES OF AMERICA, APPELLANT

v.

EDWIN D. LEE

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA

JOINT APPENDIX

Jurisdictional Statement Filed November 12, 1980
Probable jurisdiction noted March 23, 1981

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Relevant Docket Entries

Date	Nr.	Proceedings
1979		
May 29	1	Complaint filed
May 29		Summons issued
June 25	2	Summons returned served on Atty. Gen. 6/11/79; IRS 6/11/79
July 18	3	Amended complaint filed
Aug 7	4	summons ret served on US Atty on 7/20, by certifmail on deft 7/23 US Atty Gen 7/24
Aug. 14	5	ANSWER to AMENDED COMPLAINT filed by defts.
Aug 30	6	Pretrial order invoking rule 5–11, discovery complete 10/20; stip due 11/20 (Teitelbaum, J)
Nov 14	7	Pretrial stipulation filed
Dec 7	8	Amended pretrial stipulation filed
Dec. 31	9	Amended pretrial stipulation filed.
1980		
Jan 10	10	Order that briefs be filed re mot for summary jdmt (Teitelbaum, J)
Feb 4	11	Notice setting conference for 2/13 at 1:45 (Teitelbaum, J)
Mar 3	12	Pretrial stipulation filed
Mar 4	13	Order entered directing that the moving parties file within 30 days from the date of the order a brief in support of motions for summary judgment and that respondent file a brief in support of its positions within 20 days. (Teitelbaum J)
Apr 3	14	Mot for summary judmt filed by deft US
Apr 3	15	Mot for summary judmt filed by plf
Apr 3	16	Notice service mot for summ judt on deft filed by plf
May 12	17	Notice setting arg for 5/19 at 10 AM

ate	Nr.	Proceedings
May 19	18	Hearing, Teitelbaum, J-Memo filed (rep Lilienthal) CAV
Jul 15	19	Opinion and order that plf mot for summary jdmt is granted insofar as it requested refund of $91.00 and denied insofar as injunctive relief is requested. Further, deft mot for summary jdmt is denied (Teitelbaum, J)
Jul 15		Pursuant to opinion and order ent, jdmt ent accordingly of record against deft US G Conley, Clerk
Jul 15		Notice issued
Aug 14	20	NOTICE OF APPEAL TO SUPREME COURT by US Atty from order 7/15
Aug 14		Copy notice to Supreme court and counsel with docket entries
Oct 9	—	Copy letter from Supreme Court dtd 10/6/80, to W H McCree, Solicitor Gen of dept justice, ext time to docket appeal to 11/12/80
1981		
Mar 27	—	Certif copy order from Supreme Court noting probable jurisdiction

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA

Civil Action No. 79-739

COMPLAINT

[filed May 29, 1979]

EDWIN D. LEE, PLAINTIFF,

v.

UNITED STATES GOVERNMENT AND INTERNAL REVENUE SERVICE AND JEROME KURTZ, COMMISSIONER, INTERNAL REVENUE SERVICE, DEFENDANTS

PRELIMINARY STATEMENT

1. This is an action seeking relief as authorized by Title 28 U.S.C. §§ 2201 and 2202, 28 U.S.C. § 1340 and the First and Fourteenth Amendments of the United States Constitution. Plaintiff seeks a preliminary and permanent injunction against the collection of taxes, declaratory judgment and costs including reasonable attorney's fees.

JURISDICTION

2. Jurisdiction is founded upon Title 28 U.S.C. § 1340 and under the general equity jurisdiction of the Federal District Court because the illegality of the tax sought to be enjoined, and the circumstances, as herein more fully appears, constitute such special, extraordinary, and exceptional circumstances as to constitute an exception to the Internal Revenue Code of 1954 § 7421(a), 26 U.S.C. § 7421(a).

3. Jurisdiction is also founded upon Title 28 U.S.C. §§ 2201 and 2202, granting any Court of the United States, in a case of actual controversy within its jurisdiction, the power to declare the rights and other legal relations of any interested party seeking such declaration and to grant fur-

ther necessary and proper relief based upon a declaratory judgment or decree.

4. Jurisdiction is also founded upon Title 28 U.S.C. § 1331(a) granting the District Courts original jurisdiction of all civil actions wherein the matter in controversy exceeds the sum or value of Ten Thousand ($10,000.00) Dollars exclusive of interest and costs, and arises under the Constitution, laws, or treaties of the United States.

5. This is a civil action for injunctive and declaratory relief arising under the First Amendment to the Constitution of the United States as more fully hereinafter set forth. The matter in controversy involves, exclusive of interest and costs, a sum in excess of Ten Thousand ($10,000.00) Dollars and this Court has jurisdiction by reason of Title 28 U.S.C. § 1331(a).

6. This is a civil action for injunctive and declaratory relief arising under Section One of the Fourteenth Amendment to the Constitution of the United States as more fully hereinafter set forth. The matter in controversy involves, exclusive of interest and costs, a sum in excess of Ten Thousand ($10,000.000) Dollars, and this Court has jurisdiction by reason of Title 28 U.S.C. § 1331(a).

PARTIES

A. *Plaintiff*

7. Plaintiff, Edwin D. Lee, is a citizen of the United States and a resident of the State of Pennsylvania, residing at R.D. #1, New Wilmington, Pennsylvania.

8. Plaintiff, Edwin D. Lee, was, at the time this cause of action arose, and is now a member of a bona fide religious order known as the Old Order Amish.

9. Plaintiff, Edwin D. Lee, was, at the time this cause of action arose, and is now a member of the Old Order Amish and a self-employed farmer who is not subject in that capacity for the payment of social security taxes.

10. Plaintiff, Edwin D. Lee, was, at the time this cause of action arose, and is now an employer of other members of the Old Order Amish.

B. *Defendants*

11. United States Government whose principal residence is Washington, D.C., in care of the Attorney General of the United States.

12. Internal Revenue Service whose principal residence is Washington, D.C.

13. Jerome Kurtz, current Commissioner of the Internal Revenue Service, whose principal address is Washington, D.C.

COMPLAINT

14. The plaintiff is a member of the Old Order Amish, who is self-employed. A portion of the taxes which the United States of America seeks to collect represents social security taxes which the plaintiff failed to withhold from the pay of other members of the Old Order Amish, whom he employed.

15. The Internal Revenue Code provides an exemption from self-employment tax if a person can show he is self-employed and is a member of a religious sect which follows the practice of making provisions for its dependent members. The exemption does not extend to cover those who work for others.

16. The illegality of the tax sought to be enjoined, and the circumstances, as herein more fully appears, constitute such special, extraordinary, and exceptional circumstances as to constitute an exception to the Internal Revenue Code of 1954 § 7421(a), 26 U.S.C. § 7421(a).

17. This is an action to enjoin the defendant from beginning or continuing in force and effect both a purported assessment and levies against the property of plaintiff allegedly to be applied to federal social security taxes due or to become due in respect of any period falling within the period set forth in the notices forwarded to the Plaintiff.

18. On or about October 16, 1978, the plaintiff received from the defendant notice dated October 13, 1978, setting forth therein monies due the plaintiff [sic][1], a portion of

[1] Although the complaint used the term plaintiff here, it is obvious that the term defendant was intended.

which include social security taxes which the plaintiff did not withhold from the wages of individuals who worked for him and who were members of the Old Order Amish.

19. Notwithstanding the fact that under the present law the self-employment tax exemption does not extend to cover those who work for others, the plaintiff did not withhold social security taxes from the employees who worked for him who are members of the Old Order Amish.

20. If social security taxes were withheld from employees who are members of the Old Order Amish, it would deny to them the same rights afforded to members of the Old Order Amish, who are self-employed, as guaranteed by the due process and equal protection clauses of the Fourteenth Amendment of the United States Constitution.

21. Further, enforcement of the federal statute herein complained of is in derogation of plaintiff's First Amendment rights regarding the establishment and free exercise of his religion.

22. The plaintiff is denied access to the administrative procedure within the Internal Revenue Service in that the plaintiff has been notified that since the objections are based on religious beliefs, the Appellate Division of the Internal Revenue Service does not have jurisdiction.

23. The statutory exception for Tax Court proceedings is not applicable to a suit to enjoin the collection of past-due social security taxes, since the Tax Court is without jurisdiction over such taxes. *Enochs v Williams Packing and Navigation Co.* 370 US 1.

24. Nor can plaintiff litigate the merits of defendants' determination of tax by refund suit in the United States District Court or in the United States Court of Claims by reason of the requirement of *Flora v United States.* 362 US 145 (1960), decision on rehearing, 357 US 63 (1958), to the effect that a taxpayer must pay the full amount of what income tax the government says he owes for any period before the taxpayer may sue for the refund of any part thereof, and plaintiff is wholly unable to comply with such requirement as his only asset is real estate, which would have to be sold in order for the taxes to be paid. Under 28 U.S.C. § 1346(a)(1), District Courts shall have jurisdiction

concurrent with the Court of Claims. However, concurrent jurisdiction does not exist because the plaintiff's objections are based on religious beliefs and consequently, the Appellate Division of the Internal Revenue Service does not have jurisdiction.

25. The plaintiff alleges that the tax sought to be enjoined is illegally levied since it is a denial of the Equal Protection of the Laws Clause of the Fourteenth Amendment to the Constitution of the United States in that the tax is not levied upon self-employed members of the Old Order Amish but is only levied upon those members of the Old Order Amish who work for others.

26. Equity jurisdiction should intervene in that special extraordinary circumstances exist since the plaintiff has been denied access to the Appellate Division of the Internal Revenue Service, and the Tax Court, and he is unable to completely comply with the requirement of *Flora v United States*, 357 US 63 (1956), because of the reason alleged herein; and equity jurisdiction should intervene since the tax levied is illegal in that it clearly is in violation of the Equal Protection Clause of the United States Constitution.

27. This suit for preventative injunctive relief should be granted and the Anti-Injunction Act of the Internal Revenue Code 26 USCS 7421(a) should not be applied since the government cannot ultimately prevail in this matter and equity jurisdiction should otherwise exist because of the reasons set forth elsewhere herein.

28. Defendants now threaten to immediately levy on and sell plaintiff's property to satisfy the illegal and void assessment.

29. Plaintiff has no adequate remedy at law, as herein above set forth, and there is no way of testing plaintiff's liability short of violation.

30. Plaintiff will suffer irreparable injury unless Defendant is enjoined, both permanently and during the pendency of this action, and, pending the hearing on the preliminary injunction, is temporarily restrained, from collection of this tax because enforcement of the tax against Plaintiff would impose a tax that Plaintiff is unable to pay and would sub-

ject Plaintiff to heavy penalties and the possible forfeiture of all of his possessions and property.

31. The injunctive relief herein prayed is not precluded by 26 U.S.C. § 7421(a), because the assessment is illegal and void, and enforcement of the tax against Plaintiff would lead to the imminent destruction of Plaintiff's business, would ruin Plaintiff financially, and would inflict losses for which Plaintiff has no adequate remedy at law.

WHEREFORE, Plaintiff prays for judgment as follows:

32. That the above complained of federal tax statute be adjudged illegal and invalid as applied to and assessed against Plaintiff Lee.

33. That Defendants be enjoined, both permanently and during the pendency of this action, and, pending the hearing on the preliminary injunction, temporarily restrained from collection or attempting to collect from Plaintiff any federal social security tax purported to be assessed under the above referenced federal tax statute.

34. Grant Plaintiff the costs of this action, including interest on the total sum awarded at a rate of six (6%) percent, reasonable attorney's fees, to be paid by Defendants.

35. Grant an order for such other and further relief as the Court may deem necessary and proper and to declare the rights and other legal relations of any interested party seeking such declaration.

Respectfully submitted,

CAIAZZA & LAMANCUSA

By_____

FRANCIS X. CAIAZZA, ESQ.

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA

Civil Action No. 79–739

AMENDED COMPLAINT

[filed July 18, 1979],

EDWIN D. LEE, PLAINTIFF,

v

UNITED STATES GOVERNMENT AND INTERNAL REVENUE SERVICE AND JEROME KURTZ, COMMISSIONER, INTERNAL REVENUE SERVICE, DEFENDANTS

PRELIMINARY STATEMENT

1. This is an action seeking relief as authorized by Title 28 U.S.C. §§ 2201 and 2202, 28 U.S.C. § 1340 and the First and Fourteenth Amendments of the United States Constitution. Plaintiff seeks a preliminary and permanent injunction against the collection of taxes, declaratory judgment and costs including reasonable attorney's fees.

JURISDICTION

2. Jurisdiction is founded upon Title 28 U.S.C. § 1340 and under the general equity jurisdiction of the Federal District Court because the illegality of the tax sought to be enjoined, and the circumstances, as herein more fully appears, constitute such special, extraordinary, and exceptional circumstances as to constitute an exception to the Internal Revenue Code of 1954 § 7421(a), 26 U.S.C. § 7421(a).

3. Jurisdiction is also founded upon Title 28 U.S.C. §§ 2201 and 2202, granting any Court of the United States, in a case of actual controversy within its jurisdiction, the power to declare the rights and other legal relations of any interested party seeking such declaration and to grant fur-

ther necessary and proper relief based upon a declaratory judgment or decree.

4. Jurisdiction is also founded upon Title 28 U.S.C. § 1331(a) granting the District Courts original jurisdiction of all civil actions wherein the matter in controversy exceeds the sum or value of Ten Thousand ($10,000.00) Dollars exclusive of interest and costs, and arises under the Constitution, laws, or treaties of the United States.

5. This is a civil action for injunctive and declaratory relief arising under the First Amendment to the Constitution of the United States as more fully hereinafter set forth. The matter in controversy involves, exclusive of interest and costs, a sum in excess of Ten Thousand ($10,000.00) Dollars and this Court has jurisdiction by reason of Title 28 U.S.C. § 1331(a).

6. This is a civil action for injunctive and declaratory relief arising under Section One of the Fourteenth Amendment to the Constitution of the United States as more fully hereinafter set forth. The matter in controversy involves, exclusive of interest and costs, a sum in excess of Ten Thousand ($10,000.00) Dollars, and this Court has jurisdiction by reason of Title 28 U.S.C. § 1331(a).

PARTIES

A. *Plaintiff*

7. Plaintiff, Edwin D. Lee, is a citizen of the United States and a resident of the State of Pennsylvania, residing at R.D. #1, New Wilmington, Pennsylvania.

8. Plaintiff, Edwin D. Lee, was, at the time this cause of action arose, and is now a member of a bona fide religious order known as the Old Order Amish.

9. Plaintiff, Edwin D. Lee, was, at the time this cause of action arose, and is now a member of the Old Order Amish and a self-employed farmer who is not subject in that capacity for the payment of social security taxes.

10. Plaintiff, Edwin D. Lee, was, at the time this cause of action arose, and is now an employer of other members of the Old Order Amish.

B. *Defendants*

11. United States Government whose principal residence is Washington, D.C. in care of the Attorney General of the United States.

12. Internal Revenue Service whose principal residence is Washington, D.C.

13. Jerome Kurtz, current Commissioner of the Internal Revenue Service whose principal address is Washington, D.C.

COMPLAINT

COUNT ONE

14. The Plaintiff is a member of the Old Order Amish, who is self-employed. A portion of the taxes which the United States of America seeks to collect represents social security taxes which the plaintiff failed to withhold from the pay of other members of the Old Order Amish, whom he employed.

15. The Internal Revenue Code provides an exemption from self-employment tax if a person can show he is self-employed and is a member of a religious sect which follows the practice of making provisions for its dependent members. The exemption does not extend to cover those who work for others.

16. The illegality of the tax sought to be enjoined, and the circumstances, as herein more fully appears, constitute such special, extraordinary, and exceptional circumstances as to constitute an exception to the Internal Revenue Code of 1954 § 7421(a), 26 U.S.C. § 7421(a).

17. This is an action to enjoin the defendant from beginning or continuing in force and effect both a purported assessment and levies against the property of plaintiff allegedly to be applied to federal social security taxes due or to become due in respect of any period falling within the period set forth in the notices forwarded to the Plaintiff.

18. On or about October 16, 1978, the plaintiff received from the defendant notice dated October 13, 1978, setting

forth therein monies due the plaintiff [sic][2], a portion of which include social security taxes which the plaintiff did not withhold from the wages of individuals who worked for him and who were members of the Old Order Amish.

19. Notwithstanding the fact that under the present law the self-employment tax exemption does not extend to cover those who work for others, the plaintiff did not withhold social security taxes from the employees who worked for him who are members of the Old Order Amish.

20. If social security taxes were withheld from employees who are members of the Old Order Amish, it would deny to them the same rights afforded to members of the Old Order Amish, who are self-employed, as guaranteed by the due process and equal protection clauses of the Fourteenth Amendment of the United States Constitution.

21. Further, enforcement of the federal statute herein complained of is in derogation of plaintiff's First Amendment rights regarding the establishment and free exercise of his religion.

22. The plaintiff is denied access to the administrative procedure within the Internal Revenue Service in that the plaintiff has been notified that since the objections are based on religious beliefs, the Appellate Division of the Internal Revenue Service does not have jurisdiction.

23. The statutory exception for Tax Court proceedings is not applicable to a suit to enjoin the collection of past-due social security taxes, since the Tax Court is without jurisdiction over such taxes. *Enochs v Williams Packing and Navigation Co.* 370 US 1.

24. Nor can plaintiff litigate the merits of defendants' determination of tax by refund suit in the United States District Court or in the United States Court of Claims by reason of the requirement of *Flora v United States*, 362 US 145 (1960), decision on rehearing, 357 US 63 (1958), to the effect that a taxpayer must pay the full amount of what income tax the government says he owes for any period before the taxpayer may sue for the refund of any part there-

[2] See footnote 2, *supra*.

of, and plaintiff is wholly unable to comply with such requirement as his only asset is real estate, which would have to be sold in order for the taxes to be paid. Under 28 U.S.C. § 1346(a)(1), District Courts shall have jurisdiction concurrent with the Court of Claims. However, concurrent jurisdiction does not exist because the plaintiff's objections are based on religious beliefs and consequently, the Appellate Division of the Internal Revenue Service does not have jurisdiction.

25. The plaintiff alleges that the tax sought to be enjoined is illegally levied since it is a denial of the Equal Protection of the Laws Clause of the Fourteenth Amendment to the Constitution of the United States in that the tax is not levied upon self-employed members of the Old Order Amish but is only levied upon those members of the Old Order Amish who work for others.

26. Equity jurisdiction should intervene in that special extraordinary circumstances exist since the plaintiff has been denied access to the Appellate Division of the Internal Revenue Service, and the Tax Court, and he is unable to completely comply with the requirement of *Flora v. United States*, 357 US 63 (1958), because of the reason alleged herein; and equity jurisdiction should intervene since the tax levied is illegal in that it clearly is in violation of the Equal Protection Clause of the United States Constitution.

27. This suit for preventative injunctive relief should be granted and the Anti-Injunction Act of the Internal Revenue Code 26 USCS 7421(a) should not be applied since the government cannot ultimately prevail in this matter and equity jurisdiction should otherwise exist because of the reasons set forth elsewhere herein.

28. Defendants now threaten to immediately levy on and sell plaintiff's property to satisfy the illegal and void assessment.

29. Plaintiff has no adequate remedy at law, as herein above set forth, and there is no way of testing plaintiff's liability short of violation.

30. Plaintiff will suffer irreparable injury unless Defendant is enjoined, both permanently and during the pendency

of this action, and, pending the hearing on the preliminary injunction, is temporarily restrained, from collection of this tax because enforcement of the tax against Plaintiff would impose a tax that Plaintiff is unable to pay and would subject Plaintiff to heavy penalties and the possible forfeiture of all of his possessions and property.

31. The injunctive relief herein prayed is not precluded by 26 U.S.C. § 7421(a), because the assessment is illegal and void, and enforcement of the tax against Plaintiff would lead to the imminent destruction of Plaintiff's business, would ruin Plaintiff financially, and would inflict losses for which Plaintiff has no adequate remedy at law.

WHEREFORE, Plaintiff prays for judgment as follows:

32. That the above complained of federal tax statute be adjudged illegal and invalid as applied to and assessed against Plaintiff Lee.

33. That Defendants be enjoined, both permanently and during the pendency of this action, and, pending the hearing on the preliminary injunction, temporarily restrained from collection or attempting to collect from Plaintiff any federal social security tax purported to be assessed under the above referenced federal tax statute.

34. Grant Plaintiff the costs of this action, including interest on the total sum awarded at a rate of six (6%) percent, reasonable attorney's fees, to be paid by Defendants.

35. Grant an order for such other and further relief as the Court may deem necessary and proper and to declare the rights and other legal relations of any interested party seeking such declaration.

COUNT TWO

36. The facts set forth in the previous paragraphs of this Complaint are incorporated in Count Two of this Complaint by reference.

37. On January 18, 1979 the Plaintiff paid to the Internal Revenue Service the sum of Ninety-one ($91.00) Dollars, which sum was a tax against the Plaintiff.

38. The said Ninety-one ($91.00) Dollars assessment was identified as F.I.C.A. taxes.

39. On January 18, 1979, the Plaintiff filed a claim for a refund, and by letter dated March 15, 1979, the claim for adjustment was fully disallowed, in that under Section 6201 and Section 6205 of the Internal Revenue Code, the Plaintiff was deemed liable for the tax.

WHEREFORE, Plaintiff prays for judgment as follows:

40. That the above complained of federal tax statute be adjudged illegal and invalid as applied to and assessed against Plaintiff Lee.

41. That Defendants be enjoined, both permanently and during the pendency of this action, and, pending the hearing on the preliminary injunction, temporarily restrained from collection or attempting to collect from Plaintiff any federal social security tax purported to be assessed under the above referenced federal tax statute.

42. Grant Plaintiff the costs of this action, including interest on the total sum awarded at a rate of six (6%) percent, reasonable attorney's fees, to be paid by Defendants.

43. Grant an order for such other and further relief as the Court my deem necessary and proper and to declare the rights and other legal relations of any interested party seeking such declaration.

44. That the Ninety-one ($91.00) Dollars paid to the Internal Revenue Service be refunded to the Plaintiff.

Respectfully submitted,

CAIAZZA & LAMANCUSA

BY _____

FRANCIS X. CAIAZZA, ESQ.

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA

Civil Action No. 79–739

[filed August 14, 1979]

EDWIN D. LEE, PLAINTIFF

v.

UNITED STATES GOVERNMENT AND INTERNAL REVENUE SERVICE AND JEROME KURTZ, COMMISSIONER, INTERNAL REVENUE SERVICE, DEFENDANTS

ANSWER TO AMENDED COMPLAINT

Defendants, United States of America, etc., through their attorney, Robert J. Cindrich, United States Attorney for the Western District of Pennsylvania, answer the plaintiff's Amended Complaint and state that they:

1. Deny the allegations of paragraph 1.
2. Deny the allegations of paragraph 2.
3. Deny the allegations of paragraph 3.
4. Deny the allegations of paragraph 4.
5. Deny the allegations of paragraph 5.
6. Deny the allegations of paragraph 6.

Parties

7. Admit the allegations of paragraph 7.
8. Admit the allegations of paragraph 8.
9. Admit the allegations of paragraph 9.
10. Admit the allegations of paragraph 10.
11. Admit the allegations of paragraph 11.
12. Admit the allegations of paragraph 12.
13. Admit the allegations of paragraph 13.

Count One

14. Admit the allegations of paragraph 14.
15. Admit the allegations of paragraph 15.
16. Deny the allegations of paragraph 16.

17. Admit the allegations of paragraph 17.

18. Admit the allegations of paragraph 18.

19. Admit the allegations of paragraph 19.

20. Deny the allegations of paragraph 20.

21. Deny the allegations of paragraph 21.

22. Deny the allegations of paragraph 22.

23–26. Paragraphs 23 through 26 present legal arguments and are not proper allegations of fact and they are, therefore, denied.

27. Deny the allegations of paragraph 27.

28. Deny the allegations of paragraph 28.

29. Deny the allegations of paragraph 29.

30. Deny the allegations of paragraph 30.

31. Deny the allegations of paragraph 31.

WHEREFORE, defendants pray that plaintiff's claims for relief numbered 32 through 35 be denied and that Count One be dismissed, with prejudice.

Count Two

36. Answers as set forth in the previous paragraphs to this Answer are incorporated herein.

37. Admit the allegations of paragraph 37.

38. Admit the allegations of paragraph 38.

39. Admit the allegations of paragraph 39.

WHEREFORE, defendants pray that the plaintiff's claim for relief numbered 40 through 44 be dismissed and that Count Two be dismissed with prejudice.

Defendants further request that they be awarded costs and such further relief as this Court may deem proper.

ROBERT J. CINDRICH
United States Attorney

By:_____
Assistant United States Attorney

OF COUNSEL

GREGORY S. HREBINIAK
Trial Attorney
Tax Division
Department of Justice
Washington, D.C. 20530
Telephone: (202) 724-6438

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that service of the foregoing ANSWER TO AMENDED COMPLAINT has this 8th day of August, 1979, been properly served on opposing counsel by mailing copies thereof to:

Francis X. Caiazza, Esquire
302 Central Building
New Castle, Pennsylvania 16101

/s/ _____
GREGORY S. HREBINIAK

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA

Civil Action No. 79–739

[filed November 14, 1979]

EDWIN D. LEE

v

UNITED STATES GOVERNMENT AND INTERNAL REVENUE SERVICE AND JEROME KURTZ, COMMISSIONER, INTERNAL REVENUE SERVICE, DEFENDANTS

PRETRIAL STIPULATION

It is stipulated between the parties that:

I. This is an action for:

To determine whether or not Sections 6201 and Section 6205 of the Internal Revenue Code of 1954 are illegal and invalid as applied to and assessed against the Plaintiff, Edwin D. Lee, who is a member of the Old Order Amish. This is a civil action for injunctive and declaratory relief arising under the First Amendment to the Constitution of the United States.

II. Jurisdiction:

(State basis and if facts relative to jurisdiction and/or venue, citizenship and jurisdictional amount are disputed or agreed)

Jurisdiction is founded upon Title 28 U.S.C. § 1340 and under the general equity jurisdiction of the Federal District Court because the illegality of the tax sought to be enjoined, and the circumstances, as appear in the Complaint, constitute such special, extraordinary, and exceptional circumstances as to constitute an exception to the Internal Revenue Code of 1954 § 7421(a), 26 U.S.C. § 7421(a).

Jurisdiction is also founded upon Title 28 U.S.C. §§ 2201 and 2202, granting any Court of the United States, in a case of actual controversy within its jurisdiction, the power to declare the rights and other legal relations of any interested party seeking such declaration and to grant further

necessary and proper relief based upon a declaratory judgment or decree.

Jurisdiction is also founded upon Title 28 U.S.C. § 1331(a) granting the District Courts original jurisdiction of all civil actions wherein the matter in controversy exceeds the sum or value of Ten Thousand ($10,000.00) Dollars exclusive of interest and costs, and arises under the Constitution, laws, or treaties of the United States.

Jurisdiction is also founded upon Title 28 U.S.C. 1346.

III. Plaintiff's narrative statement of the case:

((Including particularly a statement of the plaintiff's theory of defendant's liability, plaintiff's injuries (personal and/or proprietary), and plaintiff's damages))

The Plaintiff is a member of the Old Order Amish, who is self-employed. The United States of American seeks to collect certain taxes from him which represents Social Security taxes which the Plaintiff failed to withhold from the pay of other members of the Old Order Amish, whom he employed.

The Internal Revenue Code provides an exemption from self-employment tax if a person can show that he is self-employed and is a member of a religious sect which follows the practice of making provisions for its dependent members. The exemption does not extend to those who work for others.

If Social Security taxes were withheld from employees who are members of the Old Order Amish, it would deny to them the same rights afforded to members of the Old Order Amish who are self-employed, as guaranteed by the due process and equal protection clauses of the Fourteenth Amendment of the United States Constitution.

If Social Security taxes were withheld from employees who are members of the Old Order Amish, it would be an infringement upon their religious rights; and by forcing Old Order Amish employers to withhold such tax, or to pay this tax if it is not withheld, is an infringement upon their religious freedom as protected by the establishment and freedom of religion clauses of the First Amendment of the United States Constitution.

* * * * *

VI. The following facts are stipulated by the parties and require no proof: (Here list each stipulated fact)

(1) The Plaintiff is a member of the Old Order Amish and admits that he did not withhold any Social Security taxes from his employees, all of which were also members of the Old Order Amish faith.

(2) The Plaintiff, as an Amishman, is an adherent of established teachings which cause him to be conscientiously opposed to acceptance of Social Security benefits. A major principal of the Amish religion is the responsibility of the Amish for its own members. Commercial Insurance and Governmental Insurance Programs including the Federal Insurance Contributions Act are contrary to this religious principal.

(3) The Amish people belong to a religious sect which follows the practice of making provisions for its dependent members.

(4) The Internal Revenue Code provides an exemption from self-employment tax if a person can show he is a member of a religious sect which follows the practice of making provisions for its dependent members.

(5) In the event plaintiff prevails, plaintiff is at least entitled to judgment in the amount $91.00, plus statutory interest, representing a fully paid assessment for the first quarter of 1977.

(6) In the event defendant prevails, defendant is entitled to judgment in the amount of $13,871.66, plus statutory interest from dates of assessment, representing assessments of tax due from plaintiff:

(7) The Old Order Amish are conscientiously and religiously opposed to the acceptance of any public insurance which makes payments in the event of death, disability, old age, or retirement or makes payments toward the cost of, or provides services for medical care, including the benefits of any insurance system established by the Social Security Act.

(8) The Old Order Amish is a bona fide religious organization and recognized as such by both the United States Government and the Internal Revenue Service.

VI. (continued)

Quarter Ending	*Amount*	*Quarter Ending*	*Amount*
June '70	657.47	March '74	677.23
Sept '70	679.63	June '74	183.45
Dec '70	610.75	Sept '74	169.87
March '71	238.95	Dec '74	259.33
June '71	496.10	March '75	171.82
Sept '71	251.95	June '75	272.14
Dec '71	502.81	Sept '75	536.76
March '72	404.47	Dec '75	618.97
June '72	526.16	March '76	410.14
Sept '72	705.78	June '76	816.84
Dec '72	1,022.18	Sept '76	798.11
March '73	456.02	Dec '76	346.44
June '73	575.53	June '77	176.50
Sept '73	379.06	Sept '77	398.08
Dec '73	280.92	Dec '77	248.20

VII. Uncontested facts:

The following facts, though not admitted, are not to be contested at the trial by evidence to the contrary:

A major principal of the Amish religion is the responsibility of the Amish for its own members. Commercial insurance and governmental insurance programs, including the Federal Insurance Contribution Act, are contrary to this religious principle.

The Amish believe that old age survivors insurance is abridging and infringing to their religious freedom. They believe that their faith is sufficient to meet their needs as they come. They believe, as the Bible says, "But if any provide not . . . for those of his own house, he hath denied the faith, and is worse than an infidel." (I Timothy 5:8)

The Amish believe that to pay F.I.C.A. tax is to admit that the government has a responsibility for aged Amish members, although they do not collect Social Security benefits, and to admit this is to deny their own responsibility, one of their main religious principals.

No Amish employee, for whom assessment against Mr. Lee has been placed, has ever accepted any Social Security benefits.

Mr. Lee has never accepted any Social Security benefits.

The members of the Old Order Amish consider it a sin against God to pay money into the Social Security System, either directly through their employer or by themselves.

Members of the Old Order Amish who are employers consider it a sin to withhold Social Security benefits from the pay of employees who are members of the Old Order Amish.

VIII. The exhibits to be offered at the trial, together with a statement of all admissions by and all issues between the parties with respect thereto are as follows:

> (Here list all documents and things intended to be offered at the trial by each party in the sequence proposed to be offered, with a description of each sufficient for identification and a statement of all admissions by and all issues between any of the parties as to the genuineness thereof, the due execution thereof, and the truth of the relevant matters of fact set forth therein or in any legend affixed thereto, together with a statement of any objection reserved as to the admissibility in evidence thereof: if no objections are noted following the description of an exhibit, the parties thereby agree to the admission of the exhibit).

There will be no exhibits on behalf of the plaintiff.

IX. A complete list of all witnesses follows:

> (If any witnesses are to be called as experts, an expert's report must be filed in compliance with Local Rule 5 II C.)

1. Edwin Lee
2. The Bishop of the area in which Mr. Lee resides.

X. Issues of law:

The following issues of law are contested and remain to be litigated upon the trial.*

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*A brief should be filed by each of the parties setting forth the authorities in support of their respective legal positions.

Whether or not the tax levied is in violation of the Equal Protection Clause of the United States Constitution.

Whether or not the tax levied is an infringement upon the religious beliefs of the Old Order Amish.

XI. Stipulation:

The foregoing admission of fact having been made, and the parties having specified the issues of fact and law remaining to be litigated, this stipulation shall supplement the pleadings and govern the course of the trial unless modified to prevent injustice.

STIPULATED AND AGREED BY:

/s/ _____
Attorney for Plaintiff

_____
Attorney for Defendant

/s/ _____
Attorney for 3rd Party Defendant

Note: If sufficient space is not available under any title of this stipulation to set forth all matters, attach a supplemental paper of the same size as this form.

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA

Civil Action No. 79–739

AMENDED PRE-TRIAL STIPULATION

EDWIN D. LEE

vs

UNITED STATES GOVERNMENT AND INTERNAL REVENUE SERVICE AND JEROME KURTZ, COMMISSIONER, INTERNAL REVENUE SERVICE, DEFENDANTS

It is stipulated between the parties that:

Should the government prevail in litigating the key issues raised in the plaintiff's Complaint, a judgment of social security taxes due, not barred by any applicable Statute of Limitations, will be entered against the Plaintiff; the said amount to be mutually agreed upon by the plaintiff and defendant.

STIPULATED & AGREED BY:

/s/ _____
Attorney for Plaintiff

/s/ _____
Attorney for Defendant

Supreme Court of the United States

No. 80-767

UNITED STATES, APPELLANT,

v.

EDWIN D. LEE

APPEAL from the United States District Court for the Western District of Pennsylvania.

The statement of jurisdiction in this case having been submitted and considered by the Court, in this case probable jurisdiction is noted.

March 23, 1981